

Office of the Secretary, HUD

§ 17.79

(d) *Previous decision by an administrative judge of the Office of Appeals.* The debtor is not entitled to a review of the Department's intent to offset if an administrative judge of the OA has previously issued a decision on the merits that the debt is past due and legally enforceable, except when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

§ 17.71 Request for hearing.

The debtor shall file a request for a hearing with the OA at the address specified in the notice or at such other address as the OA may direct in writing to the debtor.

§ 17.73 Determination of the HUD Office of Appeals.

(a) *Determination.* An administrative judge of the OA shall issue a written decision that includes the supporting rationale for the decision. The decision of the administrative judge of the OA concerning whether a debt or part of a debt is past due and legally enforceable is the final agency decision with respect to the past due status and enforceability of the debt.

(b) *Copies.* Copies of the decision of the administrative judge of the OA shall be distributed to HUD's General Counsel, HUD's Chief Financial Officer (CFO), or other appropriate HUD program official, the debtor, and the debtor's attorney or other representative, if any.

(c) *Notification to the Department of the Treasury.* If the decision of the administrative judge of the OA affirms that all or part of the debt is past due and legally enforceable, HUD shall notify the Treasury after the date that the determination of the OA has been issued under paragraph (a) of this section and a copy of the determination has been received by HUD's CFO or other appropriate HUD program official. No referral shall be made to the Treasury if the review of the debt by an administrative judge of the OA subsequently determines that the debt is not past due or not legally enforceable.

§ 17.75 Postponements, withdrawals, and extensions of time.

(a) *Postponements and withdrawals.* HUD may, for good cause, postpone or withdraw referral of the debt to the Treasury.

(b) *Extensions of time.* At the discretion of an administrative judge of the OA, time limitations required in these procedures may be extended in appropriate circumstances for good cause.

§ 17.77 Stay of referral for offset.

If the debtor timely submits evidence in accordance with § 17.69(b), the referral to the Treasury in § 17.65 shall be stayed until the date of the issuance of a written decision by an administrative judge of the OA that determines that a debt or part of a debt is past due and legally enforceable.

§ 17.79 Administrative actions for non-payment of debt.

(a) *Referrals for nonpayment of debt.* When a contractor, grantee, or other participant in a program sponsored by HUD, fails to pay its debt to HUD within a reasonable time after demand, HUD shall take such measures to:

(1) Refer such contractor, grantee, or other participant to the Office of General Counsel for investigation of the matter and possible suspension or debarment pursuant to 2 CFR part 2424, 2 CFR 180.800, and 48 CFR subpart 9.4 of the Federal Acquisition Regulation (FAR); and

(2) In the case of matters involving fraud or suspected fraud, refer such contractor, grantee, or other participant to the Office of Inspector General for investigation. However, the failure to pay HUD within a reasonable time after demand is not a prerequisite for referral for fraud or suspected fraud.

(b) *Excluded Parties List System (EPLS).* Depending upon the outcome of the referral in paragraph (a) of this section, HUD shall take such measures to insure that the contractor, grantee, or other participant is placed on the EPLS.

(c) *Report to the Treasury.* The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9304 shall be reported to the Chief Financial Officer, who shall inform the Treasury.